

CO-ORDINATE? OR SUBORDINATE?

Prepared for the "Malie Wreath" by
Rev. C. M. Hyde.

Have the different departments of the government, executive, legislative, judicial, co-ordinate authority? or is any one department sub-ordinate to another? This topic has been brought into special prominence recently in connection with a trial just terminated in the Supreme Court. The independence of the different departments of the Government—a unity as diversity, a sort of political unity—has puzzled many observers and critics. A member of Parliament, Mr. James Bryce, has just published a treatise on "The American Commonwealth," which has been immediately accorded the first rank as an authority in the matter of what is called a treaty.

A recent review of this book in the New York Evening Post brings out some facts in regard to this question of subordination or co-ordination, as Mr. Bryce has presented them. A brief abstract of some of the statements in that article supplemented by other quotations, will be helpful in clearing up the controverted matters in our governmental arrangements.

There is a tendency to unduly exalt the office of the Supreme Court in declaring some particular law to be unconstitutional. This decision does not repeal the law. Such an interference is an illustration of the working of that system of checks and balances by which the centrifugal element of individual progress and the centripetal element of social conservation, keep in balanced harmony the working of governmental forces. The judgment of the Court is strictly limited to the case under consideration. There is nothing but that which is a good sense of the community, to prevent individuals from testing a second time the authority of the law. There is nothing to prevent the lower Court from deciding another similar case in the same way as before without regard to the decision of the Supreme Court. There is nothing to prevent the Supreme Court on further light or better consideration, from overruling its former decision. The individuals interested must decide for themselves the utility or propriety of their procedure in accepting or disregarding the former action of the Court. When B. F. Wade was Judge in one of the lower Courts of Ohio, he gave his decision in a certain case. It was taken to the Supreme Court, and there reversed. Coming before him again, he gave judgment as before. He was told that the Supreme Court had reversed his former judgment. "So I have heard," was his quiet reply. "I will give them a chance to see themselves right." The case was again taken to the Supreme Court. Instead of attacking him for contempt, the Court reversed its former decision. On reconsideration, Wade's was found to be the better ruling. In any case out of the fifty-one decisions on Constitutional law, given by Chief Justice Marshall, was he in the minority, and in this one instance, professional opinion now approves Marshall's view, rather than that given by the majority of the Court.

American lawyers do not feel that this controversy, that judicial decisions should be overruled, is such a very harmful thing. We fully recognize the historic truth, that decisions have changed, are changing and ought to continue to change. We only ask that the change shall be judicious as well as judicial, as the logic of events draws new conclusions from changing human experiences. So too, a legislature may differ in opinion from the Court, and leave upon the statute books, laws which the Courts do not enforce, waiting for the results of further discussion, or simply leaving the law to lapse into "obsolescence desuetude." As to the relations of the Judiciary to the Executive we are to remember: "(1) the Executive (like the Legislature) is its own judge of constitutional power and duty; (2) the Judiciary, as such, is absolutely dependent on the Executive for the execution of its own judgments." If the Judiciary could, by precept, determine for the Executive or the Legislature the limits of their duty, the Courts would be the supreme power in the land, and the other departments would be subordinate, not co-ordinate. In ordinary cases the routine of executive action by sheriff or marshal is so much a matter of course, that people forget it is not the Court that is acting. When President Jackson said in the Cherokee case, "let John Marshall enforce the judgment himself," the speech was rough, but the utterance was Constitutional. His was no mere ministerial duty, at the behest of the Supreme Court to coerce the people of Georgia with the United States Army. His was a co-ordinate responsibility, and at his discretion the military would or would not be called out. His responsibility was to the people of the United States, not to the Court.

President Lincoln took similar ground when he refused to allow U. S. army officers to obey the habeas corpus issued by Judge Taney. "He distinctly assumed as indisputable his own right to interpret the Constitution, and the absence of all right in the Chief Justice to dictate what that interpretation should be. As President, he claimed the right to exercise his own judgment, subject only to the perils declared by the Constitution, among which is not mentioned attachment for disobedience to a Court. It would be absurd, if it were, for he himself would have to execute it. In the draft of his message to Congress on this subject, he asserts his discretion under his solemn responsibilities to the nation, to determine what laws are not to be enforced, if at any time he found it impossible to enforce all laws."

Mr. Bryce, however, very accurately reveals the vital point of ultimate power, which prevents clashing in the operation of these co-ordinate departments of government. "Each is appointed by the people to its special work, for the purpose of harmoniously co-ordinating their action. Their business is to work together, and not at odds. Behind them is that intelligent and controlling public opinion which will apply the penalty to the one that in the public judgment is at fault." This sense of direct responsibility to the people, is what prevents, and may safely be trusted to prevent any deadlock, and to preserve the proper balance between coordinate powers of government. The influence of public opinion has averted possible collisions by leading the Courts to lend their ultimate sanction to measures or usages, which, had they come under their purview at first, might have been pronounced unconstitutional. And if the needs of the time be pressing, both Courts and Constitution may have to give way. President Lincoln, in a letter to Mr. Hodges, wrote: "A limb may be amputated to save a life, but a life is never wisely given to save a limb. Measures, otherwise unconstitutional, become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation."

THE LUNATIC ASYLUM.

Condensed Report of the Surgeon for
Quarter Ending June 30, 1889.

Patients in the asylum per last report
65. Out on furlough 1—Total 66.

Admitted during the quarter: Hawaiians, male 3, female 1; Portuguese, female 2; Chinese, male 1; Norwegian, male 1; South Sea Islander, male 1—Total 9.

There were no deaths during the quarter. Two Hawaiian patients were out on furlough.

Number in asylum on June 30, 1889: Hawaiians, male 16, female 3; Chinese, male 13; Portuguese, male 11, female 4; Americans, male 2, female 1; English, female 1; Irish, male 1; German, male 2, female 1; African, male 1; South Sea Islander, male 5; Norwegian, male 2; Madagascan, male 1; East Indian, male 1; South American, male 1; Japanese, male 1—Total number 71.

Most of the cases now in the asylum are hopeless, and a large proportion have been in the institution several years—about 92 per cent of all admitted are hopeless, or in other words, incurably insane.

During the quarter, three rooms have been reconstructed for noisy or violent patients. Also a new pot factory, which has been made substantial, and will last for years. A new set of wash boilers have been put into position, chiefly intended for the cleansing of the clothes of patients. New water closets, with self-adjusting seats, have also been constructed.

The surgeon recommends a better system of sewerage for the carrying away of filth from the institution, and gives notice of insufficiency in the water supply. Water tanks have been placed on a hill back of the asylum, which assist in times of drought.

Separate wards for females are recommended in the report; and it is somewhat surprising to the ordinary citizen that a ward of this kind has not been supplied before.

Taking the report as a whole it is satisfactory; and the knowledge that the unfortunate lunatics are being cared for as much as possible under the circumstances, cannot be otherwise than gratifying.

English in Diplomacy.

Mr. Phelps, the newly appointed Minister to Germany, is reported to have said:

"We began the conference in French. Every member present understood at least two languages—French and German. We Americans proposed, as every one understood English, that we should carry on the conference in that tongue. Six out of nine voted affirmatively, and it was done."

"Even the draft of the treaty was made out in English. We found that the terms were made more clear and explicit than if written in French. Therefore, this is the first time that an international conference has been carried on in the English tongue. We have established a precedent, and I would not be surprised if every future conference of the kind should be carried on in English. It is the language of the world."

A New Railroad Idea.

A postal railroad is a new idea, and it is proposed to run it 300 miles an hour by electricity. Near Baltimore, an experimental line has been erected. It carries two cars with mail and parcels and no attendance. There are two rails below the cars and one above. The upper rail is the conductor of the electric current. The cars are of sheet-iron, 23 or more feet long and 2 feet wide. The whole affair is guided at the ends of the circuit, and solely by electricity. The proposition is to establish other roads at once, and if successful, we shall soon have them everywhere. The development of the plan for the speedy carrying of important parcels has hardly a limit. At 300 miles per hour the mail would pass from New York to St. Louis in about four hours.

The Hood in Pennsylvania knocked the Prohibition campaign endwise and the State has gone "wet."

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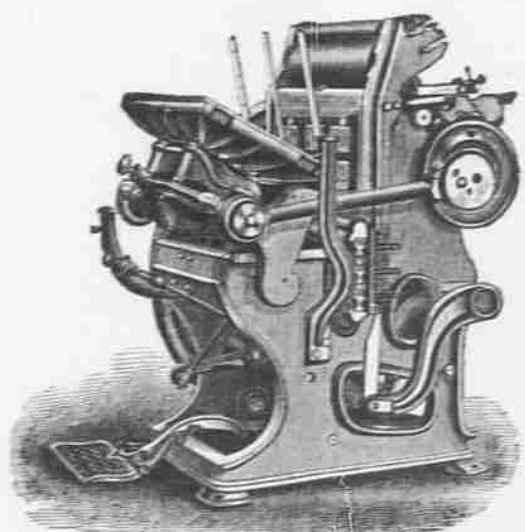
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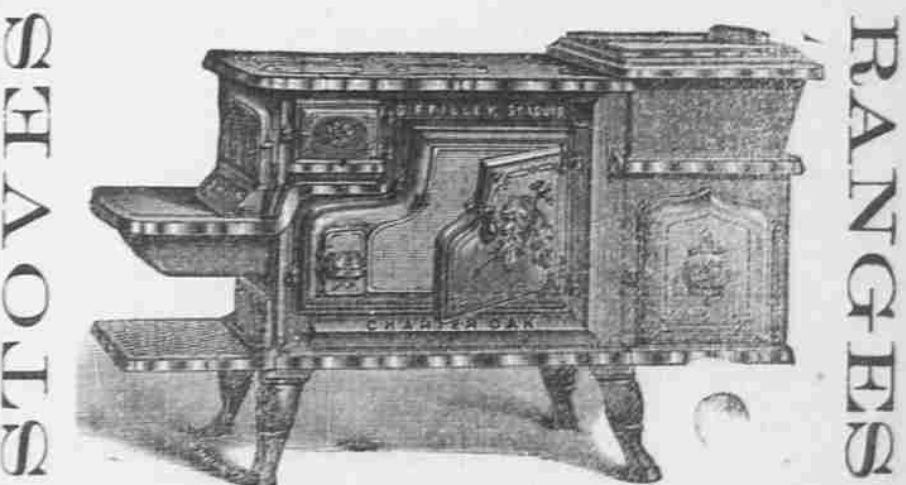
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